

County of Nassau
DBE Program

9/6/2013

**COUNTY OF NASSAU
OFFICE OF MINORITY AFFAIRS
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

Revised 9/6/2013 DSB

POLICY

The County of Nassau Office of Minority Affairs (OMA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (USDOT) under the Code of Federal Regulations, 49 CFR Part 26. The County of Nassau (County) has received federal-financial assistance from USDOT and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the County to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT- assisted contracts. It is also our policy—

- To ensure nondiscrimination in the award and administration of USDOT- assisted contracts;
- To create a level playing field on which DBEs can compete fairly for USDOT- assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in USDOT- assisted contracts;
- To assist the development of firms so that they can compete successfully in the market place outside the DBE Program; and
- To provide appropriate flexibility in establishing and providing opportunities for DBEs.

The County shall not discriminate on the basis of race, color, sex, national origin, religion or disability in the award, administration and performance of any contract or in the administration of its Disadvantaged Business Enterprise Program. The County shall take all necessary and reasonable steps to ensure nondiscrimination.

The County has disseminated this policy statement to the County Executive, Members of the Nassau County Legislature and all affected components of the County's organization and it has published this statement in general circulation, minority-focused and trade association publications. The DBE Program will be made available through the Nassau County website at: <http://www.nassaucountyny.gov>

PHILLIP E. ELLIOTT, COUNTY OF NASSAU DBE LIAISON OFFICER



EDWARD P. MANGANO
COUNTY EXECUTIVE

Office of Minority Affairs

1

TABLE OF CONTENTS

I. Overview	3
Sec. 1.01 DBE Program Objectives	3
Sec. 1.02 Definitions	3
Sec. 1.03 Scope of DBE Program	7
Sec. 1.04 OMA's Assurances	7
II. Roles and Responsibilities	8
Sec. 2.01 Overview	8
Sec. 2.02 Functions of the DBE liaison officer	8
Sec. 2.03 Designation of the DBE Liaison Officer	9
Sec. 2.04 Responsibilities of the County Executive	9
Sec. 2.05 DBE Advisory Board	9
III. Administrative Requirements for DBE Programs	9
Sec. 3.01 Overview	9
Sec. 3.02 Required Efforts on Behalf of DBE Financial Institutions	9
Sec. 3.03 DBE Directory	10
Sec. 3.04 Bidders List	10
Sec. 3.05 Over-concentration	11
IV. Certification	11
Sec. 4.01 Overview	11
Sec. 4.02 New York State Unified Certification Program	11
Sec. 4.03 Denials of Initial Request for Certification	11
Sec. 4.04 Certification Appeals	12
V. Goals	12
Sec. 5.01 Overall Goals	12
Sec 5.02 Contract Goals	12
Sec 5.03 Goals for Transit Vehicle Manufacturers	12
VI. Procurement Process and Contract Requirements	13
Sec. 6.01 Set-asides, Quotas or Preferences	13
Sec. 6.02 Good Faith Efforts	13
Sec. 6.03 Administrative Reconsideration	15
Sec. 6.04 Post Award Good Faith Efforts	15
Sec. 6.05 Counting DBE participation toward goals	16
Sec. 6.07 Required Contract Clauses	20
Sec. 6.08 Fostering Small Business Participation	21
VII. Record keeping, Monitoring and Reporting	22
Sec. 7.01 Overview	22
Sec. 7.02 Contractors Records	23
Sec. 7.03 Confidentiality of Information, Cooperation, and Complaints	23
Sec. 7.04 Monitoring Contractors' Performance and Violations	24
Sec. 7.05 Enforcement actions under the DBE program	24
Sec. 7.06 Fraud Detection and Prevention	26
VIII. Business Support Programs	26
Sec. 8.01 Business Development Program	26
Attachments	27
Attachment A – Organizational Chart	29
Attachment B – Minority Owned Banks	30
Attachment C – Four Certifying Agencies	31
Attachment E – Guidance Concerning Good Faith Efforts	39
Attachment F - Overall Goal and Goal Setting Methodology for FFY 2012-2014	42
Attachment G – Individual Determinations of Social and Economic Disadvantage	45

I. Overview

Sec. 1.01 DBE Program Objectives

The County of Nassau Office of Minority Affairs (OMA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (USDOT) under the Code of Federal Regulations (CFR), 49 CFR Part 26, as may be amended from time to time. The County of Nassau (County) has received federal financial assistance from USDOT and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26. The County's DBE program reflects a determination that there is a strong basis in evidence linking it to disparities between the proportion of minorities and/or women hired for projects or contracts and the proportion of minorities and/or women willing and able to do the work. This program is designed to accomplish the following goals:

- (1) To ensure nondiscrimination in the award and administration of Federally-Funded Contracts in federal financial assistance programs;
- (2) To create a level playing field on which DBEs can compete fairly for federally-assisted contracts;
- (3) To ensure that the County's DBE program is narrowly tailored in accordance with applicable federal law;
- (4) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (5) To help remove barriers to the participation of DBEs in federally-assisted contracts;
- (6) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (7) To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Sec. 1.02 Definitions.

49 CFR §26.5 contains definitions of the terms used in the DBE regulation. The definitions of the designated groups included in the definition of "Socially and Economically Disadvantaged Individual" are derived from the United States Small Business Administration's (SBA) new small disadvantaged business program regulation (13 CFR § 124.3).

(a) Whenever used in this Program, the following terms shall have the meaning provided in 49 CFR § 26 (sometimes referred to herein as the "DBE Regulation" or "Regulation"), reproduced, in part, below for convenience:

- (1) *Affiliation* has the same meaning as provided in 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - i. One concern controls or has the power to control the other; or
 1. A third party or parties controls or has the power to control both; or
 2. An identity of interest between or among parties exists such that affiliation may be found.
 - ii. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.
- (2) *Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.
- (3) *Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT- financially assisted highway, transit or airport program.
- (4) *Disadvantaged Business Enterprise* or *DBE* means a for-profit small business concern: (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (5) *DOT-Assisted or Federally-Funded Contract* means any contract between the County and a contractor (at any tier) funded in whole or in part with federal financial assistance from the USDOT, including leases, letters of credit or loan guarantees, except a contract solely for the purchase of land.
- (6) *Good Faith Efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program goal.
- (7) *Joint Venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

- (8) *Operating Administration* or *OA* refers to the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and/or the Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
- (9) *Personal Net Worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
- (10) *Primary Industry Classification* means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).
- (11) *Principal Place of Business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, OMA will determine the principal place of business for DBE program purposes.
- (12) *Race-Conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program, but set-asides and price credits for DBEs would also be considered race-conscious measures.
- (13) *Race-Neutral* measure or program is one that is, or can be, used to assist all small businesses. While benefiting DBEs, such programs are not solely focused on DBE firms. Examples of race-neutral measures would include outreach programs, technical assistance programs, and prompt payment clauses, all of which can assist a wide variety of small businesses, not just DBEs. As used in this regulation, race-neutral includes gender neutrality.
- (14) *Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

- (15) *Small Business Concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR §26.65(b). The cap is currently set at \$22,410,000 in average annual gross receipts over the firm's previous three fiscal years. This amount is adjusted for inflation by the Secretary of DOT from time to time. It should be noted that a not-for-profit firm may not be certified as a DBE. However, a firm owned by an Indian tribe or Alaska Native Corporation as an entity may be certified as a DBE.
- (16) *Socially and Economically Disadvantaged* individuals means any individual who is a citizen (or lawfully admitted permanent resident) of the United States, has certified that his or her Personal Net Worth does not exceed \$1.32 million, and who is –
- i. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis with factors to be considered found in Appendix E to 49 CFR 26 and as **Attachment G** to this Policy.
 - ii. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 1. *Asian-Pacific Americans*, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 2. *Black Americans*, which includes persons having origins in any of the Black racial groups of Africa;
 3. *Hispanic Americans*, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 4. *Native Americans*, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 5. *Subcontinent Asian Americans*, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 6. Women; and/or

7. Any individual groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(b) Unless a phrase or word is defined by the CFR or another statute or regulation cited by this Program, the phrase's or word's meaning is according to its context, the rules of grammar, and common usage.

Sec. 1.03 Scope of DBE Program

49 CFR§ 26.3 defines the applicability of the DBE regulations in terms of the types of funds being expended by the recipient. The types of federal funding to which the DBE regulations apply are defined as those authorized by:

- a) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107, or
- b) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

In sum, any third party contract which is awarded by the County and which is funded in whole or in part with USDOT funds, is subject to the requirements of 49 CFR§ 26. It does not matter whether the federal funds are for planning, capital or operating assistance, the DBE rules apply. Thus, the provisions of this program shall apply to all DOT-Assisted procurement and contracting, including construction and the acquisition of all commodities, equipment, goods, and services (including professional services), however, titled and irrespective of the modality or manner procured.

Notwithstanding the above, a contract that is funded entirely with local funds – without any federal funds – is not subject to the DBE requirements under this rule. Overall goals and contract goals established to meet those goals are addressed subsequently in Section V herein. The County recognizes that certain types of procurements may not have subcontracting opportunities or be appropriate for DBE goal setting. Thus, the County will comply with the requirements of the Regulation by using a combination of race-neutral and race-conscious means.

Sec. 1.04 Nassau County's Assurances

Nassau County, as the recipient, shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federally-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Nassau County shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of federally-assisted contracts. OMA's DBE program, as required by 49 CFR part 26, and as approved by the United States Department of Transportation (USDOT), is incorporated by reference in this program Policy Statement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the County's agreement with the USDOT. Upon notification to the County of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under the DBE Regulation and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)

II. Roles and Responsibilities

Sec. 2.01 Overview

The County acknowledges that the successful implementation of its DBE program requires the commitment of its leadership from the highest levels of government, internal coordination of effort and an adequate staff to carry out program requirements. This section addresses the role and responsibilities of the DBE Liaison Officer, staff structures, communication issues and the involvement of key County stakeholders.

Sec. 2.02 Functions of the DBE liaison officer

Pursuant to 49 CFR §26.25, the County is required to have a DBE Liaison Officer who has direct, independent access to the Chief Executive Officer concerning DBE program matters. The Chief Executive Officer in Nassau County is the County Executive. The DBE Liaison Officer will be responsible for implementing, developing, and monitoring all aspects of the County's DBE program. The Regulation also requires the County to designate adequate staff to administer the DBE program.

One area of the Liaison Officer's responsibility will include acting as an advocate for DBE contractors, subcontractors and suppliers of any tier on the County's contracts. The DBE Liaison Officer will also be available to any DBE who is experiencing difficulties in the payment process or in any other aspect of the contract work. The Liaison Officer shall be available to investigate complaints, mediate disputes and recommend remedies to the appropriate County management officials. Other duties and responsibilities of the DBE Liaison Officer shall include but are not limited to the following:

1. Coordinating developmental, managerial and technical assistance activities for DBEs.
2. Gathering and reporting statistical data and other information as required.
3. Reviewing third party contracts and purchase requisitions for compliance with this program.
4. Working with all County departments to set overall annual goals.
5. Disseminating information on available contracting opportunities to ensure nondiscrimination in the award and administration of USDOT assisted contracts.
6. Identifying contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitor results.
7. Analyzing the County's progress toward goal attainment and identifying ways to improve progress.
8. Participating in pre-bid meetings.
9. Advising the County Executive on DBE matters and achievement.
10. Chairing the DBE Advisory Committee, which is made up of procurement, legal, public works, contracting and other County personnel responsible for making management-level decisions on procurement and contracting.
11. Participating with legal counsel and project directors to determine contractor compliance with good faith efforts requirements.
12. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
13. Planning and participating in DBE training seminars.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Act as liaison to the Uniform Certification Process in New York State.

Sec. 2.03 Designation of the DBE Liaison Officer

The County has designated the following individual as the DBE Liaison Officer: **Phillip E. Elliott, Office of Minority Affairs, 1550 Franklin Avenue, Mineola, NY 11550, (516) 571-0415, pelliott@nassaucountyny.gov.** In that capacity, Phillip Elliott is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provisions of 49 CFR Part 26. Phillip Elliott has direct, independent access to the County Executive, Edward P. Mangano, concerning DBE program matters. An organization chart displaying the DBE Liaison Officer's position in the organization is found in *Attachment A* to this program.

The DBE Liaison Officer ("DBELO") has one professional staff employee who devotes a portion of his/her time to the program.

Sec. 2.04 Responsibilities of the County Executive

The County Executive is responsible for:

1. Establishing a DBE program and policy that is supported by County deputies, directors, managers and staff throughout the organization.
2. Requiring all deputies, directors and managers to coordinate resources for effective integration of the DBE program.
3. Allowing the DBE Liaison Officer direct and independent access concerning DBE matters.
4. Assuring adequate staffing to minimize potential conflicts among departments.

Sec. 2.05 DBE Advisory Board

The DBE Advisory Board will assist the DBE Liaison Officer by giving input and establishing its overall annual goals. The Board consists of representation from minority, women and general contractor groups, community organizations, and other officials or organizations.

III. Administrative Requirements for DBE Programs

Sec. 3.01 Overview

The County acknowledges that the successful implementation of our DBE program requires the commitment of our leadership from the highest levels of government, internal coordination of effort and an adequate staff to carry out program requirements. This section addresses the role and responsibilities of the DBE Liaison Officer, staff structures, communication issues and the involvement of key County stakeholders.

Sec. 3.02 Required Efforts on Behalf of DBE Financial Institutions

49 CFR §26.27 requires the County to thoroughly investigate the full extent of services offered by DBE financial institutions in the community, and to make reasonable efforts to use these institutions. The County acknowledges that it must also encourage prime contractors to use such institutions.

The County currently maintains deposits in one DBE institution and intends to continue to do so. The County strongly encourages prime contractors to use the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities. The list of DBE financial institutions is available from the County Office of Minority Affairs and at the following site: <http://www.federalreserve.gov/releases/mob/>. The list has been reproduced and attached hereto as **Attachment B**. This is the most current listing which was last updated June 2011.

Sec. 3.03 DBE Directory

49 CFR §26.31 requires the County to compile and update a directory or source list of all firms eligible to participate as DBEs in County programs. The listing for each firm must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. This directory is maintained by the New York State Unified Certification Program (NYSUCP) and is made available to interested persons, including contractors and the public on request.

The NYSUCP maintains the directory of DBE firms that have been certified to do work as DBEs. The information required for the Directory includes the name, address, phone number, and the types of work the firm has been certified to perform as DBE. The primary purpose of the Directory is to show the results of the certification process. Certification of these firms is conducted by one of the four certifying agencies in New York that is listed in **Attachment C**. The NYSUCP Directory is located at the following website address: <http://www.dot.state.ny.us/crb/registry.txt>.

Sec. 3.04 Bidders List

49 CFR §26.11 requires the County to create and maintain a bidders list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on federally-funded projects. For every firm, the following information must be included:

- (1) Firm name,
- (2) Firm address,
- (3) Firm's status as a DBE or non-DBE,
- (4) The age of the firm, and
- (5) The annual gross receipts of the firm.

The bidders list is intended to be a count of all firms that are participating, or attempting to participate, on federally-funded contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on federally-funded projects, including both DBEs and non-DBEs. The County intends to use the bidders' lists to determine the availability of DBE and non-DBE firms. Creating and maintaining a bidders list will give the County another valuable way to measure the relative availability of ready, willing and able DBEs when setting their overall goals. (See Section 5.01 – Overall Goals.) The County has recently implemented its newly revamped e-procurement system, whereby all vendors participating in or seeking to participate in bids or other procurement opportunities are electronically registered with the County. This system allows the County to collect, store and sort data more efficiently. Vendors

must register with the County by logging onto the County website and entering required information. Once all vendor entries have been completed, the system will allow the County to produce more accurate reports of DBE availability.

Sec. 3.05 Over-concentration

49 CFR §26.33 requires the County to make a determination relating to the over-concentration of DBE firms in certain types of work. The County has determined that there is no over-concentration of DBEs; that is that there is no such abundance of DBEs in a certain type of work so as to unduly burden the opportunity of non-DBE firms to participate in a specific type of work.

IV. Certification

Sec. 4.01 Overview

The DBE Regulation requires that the program be narrowly tailored so that small businesses in general are encouraged to participate in federally-funded contracts. To ensure that the program has been narrowly tailored, only those businesses, which qualify as DBEs may participate in federally-funded contracts as DBEs and only those certified as DBEs may be counted as such for the purpose of calculating annual goals. 49 CFR §26, Subparts D and E, prescribe standards to be applied and procedures to be followed when certifying businesses as DBEs. This section addresses the certification standards and procedures, the New York Unified Certification Program and the County's role in the certification process.

Sec. 4.02 New York State Unified Certification Program

The New York State Unified Certification Program (NYSUCP) provides for "one-stop shopping" for DBE firms applying for certification in New York State. An applicant may fill out one form, go through one application process and, if certified, become able to work as a DBE for any NYS recipient that is federally-funded. The Uniform Certification Application is attached as **Attachment D**. The NYSUCP has consolidated all DBE firms certified by the four NYSUCP Certifying Entities into one centralized DBE Directory for USDOT funded contracts for Airport, Highways, and Public Transit.

The County is a Non-Certifying NYSUCP Partner and it can neither issue nor revoke DBE Certification. Thus the County relies on the four Certifying Entities to complete the certification process for potential DBEs wishing to do business in the County as a DBE.

Those firms wishing to apply for certification in New York State are encouraged to apply to one of the four NYSUCP Certifying Entities located closest to their headquarters or principal place of business. Please refer to **Attachment C**. If there are specific questions that an applicant has about the certification process, that applicant should contact their certification entity referred to in **Attachment C**.

Sec. 4.03 Denials of Initial Request for Certification

When a NYSUCP Certifying Entity denies a request by a firm, which is not currently certified with the NYSUCP, to be certified as a DBE, the firm will be provided with a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial

by the NYSUCP Certifying Entity that denied certification. All documents and other information on which the denial is based must be made available to the applicant, on request. When a firm is denied certification, it must wait twelve (12) months before it may reapply to the NYSUCP for certification.

When a NYSUCP Certifying Entity makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the United States Department of Transportation. (See Sec. 4.04).

Sec. 4.04 Certification Appeals

If a firm is denied certification or whose eligibility is removed by a NYSUCP Certifying Entity, it may make an administrative appeal to the USDOT.

If you are a complainant in an ineligibility complaint to your NYSUCP Certifying Entity [including the concerned operating administration in the circumstances provided in 49 CFR 26.87(c), you may appeal to the USDOT if the NYSUCP Certifying Entity does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible. Send appeals to the following address:

United States Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, SE
Washington, DC 20590.

V. Goals

Sec. 5.01 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in *Attachment F*.

Sec 5.02 Contract Goals

The County will use contract goals to meet any portion of the overall goal the County does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

Sec 5.03 Goals for Transit Vehicle Manufacturers

In accordance with 49 CFR §26.49, the County will require each transit vehicle manufacturer ("TVM"), as a condition of being authorized to bid or to propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR §26.49. Alternatively, the County, at its discretion and with FTA approval, may establish project-specific goals for DBE participation in the procurement of transit vehicles, in lieu of TVMs complying with this element of the Program.

VI. Procurement Process and Contract Requirements

Sec. 6.01 Set-asides, Quotas or Preferences

The County will not use quotas for DBEs on federally-funded contracts. A quota is a simple numerical requirement that a contractor must meet, without consideration of other factors. The County will not refuse showings of good faith efforts or arbitrarily disregard them, thereby using a quota. Bidders are required to make good faith efforts to meet contract goals where such goals are stated, but the County will not deny a contract to a bidder solely on the basis that it did not obtain enough DBE participation to meet the goal. The County will consider bidders' documentation of good faith efforts. If bidders make good faith efforts to meet contract goals, they will be considered to have complied with the intent of the DBE regulations, even if their good faith efforts fail to meet the actual contract goal.

The County's DBE program does not set aside a certain percentage of contracts or dollars for a specific set of contractors (except as provided for Fostering Small Business Participation 49CFR 26.39 effective February 2011). The DBE program is a goals program, which encourages participation without imposing rigid requirements of any type.

Sec. 6.02 Good Faith Efforts

When the County determines that the established overall aspirational goal is not being achieved, it will require contract goals by identifying DBE goals for certain contracts in bid documents. The County treats bidders'/offerors'/consultants' ("bidder") compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal is meeting all the requirements of the advertisement and solicitation. In determining whether a bidder has made good faith efforts, the County may take into account the performance of other bidders in meeting the contract goal. 49 CFR §26.53 requires the County to award a contract with a DBE goal to a bidder who has made good faith efforts to meet the goal. A *good faith effort* is defined as one where the bidder:

- (1) Documents that it has obtained enough DBE participation to meet the goal; **OR**
- (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The County has identified actions that will be considered when making determinations on whether there have been adequate good faith efforts by referencing Appendix A to Part 26 attached to this policy as ***Attachment E – Guidance Concerning Good Faith Efforts***. The following consists of but is not limited to those identified actions:

- (1) Adequate solicitation of DBEs (through all reasonable and available means), with sufficient time for DBEs to respond to the solicitation;
- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved;
- (3) Providing interested DBEs with adequate information about the plans, specifications and

requirements of the contract in a timely manner;

- (4) Negotiating in good faith with interested DBEs. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract goal, as long as the costs are reasonable. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable;
- (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the grantee or contractor; and/or
- (7) Effectively using the services of available minority/women community organizations and other organizations to provide assistance in the recruitment and placement of DBEs.

Each solicitation for which a contract goal has been established will require the bidders to submit the following information to **Phillip E. Elliott, DBE Liaison Officer, County of Nassau, 1550 Franklin Avenue, Mineola, NY 11501**, no later than seven (7) business days following bid opening:

1. The names and addresses of known DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

The following personnel are responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: DBELO. OMA will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before a commitment to the performance of the contract by the bidder is made. Should the submission be found lacking in effort, the bidder's designated official will be advised as soon as possible after bid opening. The low bidder will be afforded the opportunity to demonstrate why a good faith effort finding is warranted.

The low bidder must request a review, in writing (the "Review Letter"), by the close of business on the same day in which bid opening occurred. A formal review will occur promptly after receipt of the Review Letter. Review Letters must include a representation of facts. Only matters outlined in this request will be considered. The DBELO will make the determination of findings known not later than five (5) business days from the date the review by the DBELO occurred. All determinations by the OMA are final and cannot be appealed to US DOT.

Sec. 6.03 Administrative Reconsideration

If the DBELO determines that an apparent successful bidder is not responsive because it has not documented sufficient good faith efforts or that the apparent successful bidder has failed to meet the requirements of this section, it will, before the award of the contract, contact the bidder by certified mail and provide the bidder with an opportunity to request an administrative reconsideration. **ANY REQUESTS FOR ADMINISTRATIVE RECONSIDERATION MUST BE RECEIVED WITHIN TEN (10) BUSINESS DAYS OF THE REVIEW LETTER and must be sent to the DBE Reconsideration Officer, Office of Minority Affairs, 40 Main Street, 3rd Floor, Hempstead, New York 11550.**

- (1) As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- (2) The decision on reconsideration will be made by a reconsideration official who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder will have the opportunity to meet in person with the DBE Reconsideration Officer to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) The evidence presented during the administrative reconsideration hearing will be reviewed de novo. The DBE Reconsideration Officer may consider newly admitted evidence when determining whether the bidder met the requirements of this section.
- (5) The DBE Reconsideration Officer will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (6) The result of the reconsideration process is final and is not administratively appealable to the United States Department of Transportation.

Sec. 6.04 Post Award Good Faith Efforts

When a contractor believes a DBE is unable or unwilling to meet the contract terms the contractor must document steps taken to advise the DBE of its intentions relative to continuing/terminating the subcontract. When a contractor, in conjunction with the OMA believes non good faith effort is evident, the contractor may take necessary steps to correct the deficiency up to and including termination of the subcontract. No contractor will be penalized for shortfalls arising from a DBE's unwillingness or inability to honor subcontract arrangements provided the contractor can demonstrate to the DBELO that it acted diligently to communicate (in writing) their concerns, conducted itself in a customarily acceptable business manner, has not arbitrarily acted to remove a DBE without cause, documented efforts to assist the DBE in fulfilling the terms of the subcontract or working arrangement, acted reasonably to integrate the subcontracts into the project team, and reported the DBE problems to the DBELO. If adequate work time, as determined by the project manager, remains to replace the DBE with another DBE, then a contractor shall use good faith efforts to do so.

Under no circumstance is a prime contractor obligated to continue the subcontract of a DBE not meeting terms of the subcontract (as defined in the subcontract). When OMA considers an item as incidental and no specific subcontract is required, OMA will accept as documentation the agreed upon work provided it is spelled out, including terms on a purchase order or letter agreement.

When a Prime can substitute another DBE to fulfill the subcontract, it shall do so without added cost to the County. In any case, primes contractors shall furnish project management and the DBELO with written documentation substantiating allegations of impropriety/derelection prior to removing any DBE. Nothing in the above prohibits a prime contractor from immediate removal of a DBE when Federal/State criminal/civil violations have been found. Any changes to a subcontract must be coordinated with project management and documented through process of change orders.

In cases where a DBE firm believes it is being discriminated against, it's work is not being integrated/considered, or is being treated adversely by the contractor/consultant, the DBE should document its concerns/issues in writing - citing date, time, personnel involved and specific matter and submit said documentation to the contractor/consultant's management/CEO or in the case, of civil rights violation directly to the Company's EEO Officer. Copies may be provided to the DBELO; however, first course of action is directly with the contractor. While OMA is not a party to subcontractor /consultant agreements, the DBELO may interview parties in an attempt to resolve issues or may refer the matter to appropriate Federal/State agency with jurisdiction in the matter. A prime contractor determined not to have acted in good faith to satisfy DBE participation efforts will be required to justify why OMA should not take sanctions it deems appropriate under the contract. Such determination shall be made by the DBELO.

Sec. 6.05 Counting DBE participation toward goals

49 CFR § 26.55 sets forth the criteria and defines the methodology for counting DBE participation toward contract goals. The County will obtain as much as possible of the DBE participation needed to meet their overall goals through race-neutral measures. Race-neutral measures will include such activities as training, technical assistance, bonding assistance, business development or mentor-protégé programs, breaking contracts up into pieces that small businesses can readily perform, and awards of prime contracts to DBEs through the regular competitive process. The basic principles of counting DBE participation are summarized as follows:

1. Actual Performance. When a DBE participates in a contract, the County will count only the value of the work actually performed by the DBE toward DBE goals.
 - i. For construction contracts, the County will count the entire amount of that portion of the contract that is performed by the DBE's own forces, including the cost of supplies purchased and equipment leased by the DBE for the work (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - ii. For professional, technical, consultant or managerial services contracts, the County will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, or for providing bonds or insurance

specifically required for the performance of a federally-funded contract, provided the County determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- iii. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
2. Joint Ventures. When a DBE performs as a participant in a joint venture, the County will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces toward DBE goals.
3. Commercially Useful Function. The County will count expenditures to a DBE contractor only if the DBE is performing a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- i. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - ii. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the County will presume that it is not performing a commercially useful function.
 - iii. When a DBE is presumed not to be performing a commercially useful function as provided for in this section, the DBE may present evidence to the DBELO to rebut this presumption.
 - iv. The DBELO's decisions on commercially useful function matters are subject to review by the concerned operating administration.
 - v. The following factors will be used in determining whether a DBE trucking company is performing a commercially useful function:
 - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. The DBE will receive credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - f. For purposes of this paragraph (v), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
4. Suppliers. For expenditures with DBEs who supply materials or supplies, this section establishes rules for counting DBE participation based upon whether the DBE is a manufacturer or a regular dealer. For expenditures with DBE manufacturers, the County will count one hundred percent (100%) of the cost of the materials or supplies. For expenditures with DBEs who are regular dealers, the County will count sixty percent (60%) of the cost of the materials or supplies.
- i. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - ii. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - iii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment

shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- iv. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
5. Brokers. The County will not count any portion of the cost of the materials and supplies toward DBE goals for purchases of materials and supplies from a DBE, which is neither a manufacturer nor a regular dealer; however, the County may count toward DBE goals, fees or commissions charged by a DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
6. Effective Count and Exclusions. The following details when DBE participation may be counted and what participation is excluded:
- i. If a firm is not currently certified as a DBE at the time of the execution of the contract, the County will not count the firm's participation toward any DBE goals.
 - ii. The County will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE, evidenced by a copy of the canceled check or receipt given to the DBELO by registered and/or certified mail.
 - iii. If the contract amount overruns, the contractor will not be required to increase the dollar amount of DBE participation. If the contract amount under runs, the contractor will not be allowed to decrease the dollar amount of DBE participation except when the DBE subcontracted items themselves under run.

Sec. 6.06 Termination of DBE Contractor

- (1) A prime contractor is prohibited from terminating for convenience a DBE subcontractor or an approved substitute DBE firm and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the DBELO's prior written consent.
- (2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, a prime contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the County establishes for the procurement.
- (3) Failure to comply with the requirements of this section will result in administrative remedies, as needed.

Sec. 6.07 Required Contract Clauses

The DBE Regulation requires the County to provide for contract clauses which require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than a specific number of days from receipt of each payment that the grantee makes to the prime contractor. Retainage payments withheld by the prime contractor from the subcontractor are also required to be returned within a specific number of days after the subcontractor's work is satisfactorily completed. Additionally, each contract the County signs with a prime contractor, signed by the prime contractor with the County, and each subcontract the prime contractor signs with a subcontractor must contain assurance regarding non-discrimination. This section details required language that must be included in every federally-funded contract.

Prompt Payment Mechanisms

Under 49 CFR 26.29, the County is required to include a provision in their federally-funded contracts requiring prime contractors to make prompt payments to their subcontractors, DBE and non-DBE alike. Payment is required only for satisfactory completion of the subcontractor's work. The following language shall be included in every federally-funded contract:

Contractor agrees as follows:

- (a) Subcontractors shall be paid for satisfactory performance of their contracts no later than thirty (30) calendar days from receipt of each payment made to the Contractor.**
- (b) Failure to comply with the terms and conditions of this provision shall constitute a breach of contract and further payments for any work performed may be withheld until such time as corrective action is taken. The Contractor shall be responsible for any corrective work shown at the time of final inspection. If the Contractor fails to take corrective action, the County reserves the right to terminate the contract.**
- (c) Any delay or postponement of payment among the parties may take place only for good cause, with prior written approval from the County.**
- (d) All subcontract agreements between the Contractor and subcontractor shall be in writing and shall contain all of the federal requirements and pertinent provisions of the prime contract.**

Retainage

The County requires prime contractors to return retainage within a given number of days from the time the subcontractor's work had been satisfactorily completed, even if the prime contractor's work had not yet been completed. The following language shall be included in every federally-funded contract:

The prime contractor agrees further to release retainage payments to each subcontractor within thirty calendar (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

Contract Assurance

Central to the County's implementation of the foregoing policy are the signed "assurances" required of prime contractor on federally-funded contracts. Each contract the County signs with a prime contractor, signed by the prime contractor with the County, and each subcontract the prime contractor signs with a subcontractor shall include the following assurance:

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate.

Sec. 6.08 Fostering Small Business Participation (requirement of 49 CFR 26.39 effective February 2011)

A component of the County race-neutral program may include the establishment of a race-neutral, small business set-aside program/initiative for prime contracts valued under \$200K. The County will require primes establish alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures of small businesses, including DBEs, to compete for and perform lower-tier prime contracts.

The Small Business Program will be structured to facilitate competition by small business concerns, with elements to eliminate obstacles to their participation, including unbundling of contracts that may preclude small business participation in procurements as lower tier prime contractors or subcontractors. The County may require bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform. For those prime contracts not having established DBE contract goals, lower-tier prime contractors will be prohibited from self-performing all the work involved. The County may require prime contractors to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, regardless of the tier. To further foster small business participation, the County will develop and implement revised specifications to require acceptable/creative inclusion strategies for non-DBE prime contractors to ensure the participation of small businesses that also results in the utilization of DBEs at all tiers.

Race-neutral components of the County DBE Program reflect its best efforts to reach out and assist all businesses, including minority and women-owned businesses, in the local market place. Other race-neutral measures may include but are not limited to:

- Participation any time a DBE wins a prime contract through customary competitive procurement procedures, awarded a subcontract on a prime contract that does not carry a DBE goal or, even if there is a DBE goal, wins a subcontract from a prime contractor that didn't consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts);
- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses;

- Providing assistance in overcoming limitations, such as inability to obtain bonding or financing (e.g., simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Providing technical assistance and other services;
- Conducting information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; providing information in languages other than English, where appropriate);
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- Ensuring distribution of the NYSUCP DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and
- Increase oversight compliance monitoring, reporting and DBE Program initiatives.

VII. Record keeping, Monitoring and Reporting

Sec. 7.01 Overview

49 CFR §26.37 requires the County to establish a monitoring and enforcement mechanism to verify that the work committed to DBEs at the contract awarding stage is actually performed by the DBEs. The County has defined a strong and effective set of monitoring and compliance provisions in its DBE program. The County will measure payments actually made to DBEs, not just promises at the award stage. The County will keep a running tally of the extent to which, on each contract, performance matches promises. Prime contractors whose performance falls short of original commitments will be subject to the compliance mechanisms discussed below. This section details those mechanisms and lays out remedies.

Sec. 7.02 Contractors Records

For every prime contractor and subcontractor bidding, quoting or providing services on a federally-assisted contract, the prime contractor will provide the County with the following information on a quarterly basis:

- (1) Firm name;
- (2) Firm address;
- (3) Firm's status as a DBE or non-DBE;
- (4) The age of the firm; and
- (5) The annual gross receipts of the firm.

The County will require as a condition of prequalification, the collection of the above referenced information.

Sec. 7.03 Confidentiality of Information, Cooperation, and Complaints

(A) Availability of records. In responding to requests for information concerning any aspect of the DBE program, the County complies with provisions of the New York Local Government Records Law and other applicable laws. The County may make available to the public any information concerning the DBE program, release of which is not prohibited by New York or Federal law.

(B) Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

- (1) Cooperation. All participants in the County's DBE program (including, but not limited to, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by the County or DOT. Failure to do so shall be a ground for appropriate action against the party involved.
- (2) Intimidation and retaliation. No contractor or any other participant in the program is allowed to intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(C) Complaint Procedure. Individuals who have cause to think that they have been subjected to intimidation or retaliation shall follow the procedures below in processing and resolving a complaint:

- (1) The complainant shall present the complaint in writing to the DBELO.
- (2) The DBELO will contact the complainant to acknowledge receipt of the complaint and advise the complainant of his/her right to bring the alleged incident to the attention of the USDOT, United States Department of Justice, or other federal authority, as applicable.
- (3) The DBELO will contact the party alleged to have caused the intimidation or retaliation of the complaint and advise the party of the proceedings.
- (4) The DBELO will immediately notify the County Executive and USDOT of the complaint, and will conduct an investigation within thirty (30) working days.
- (5) Within fifteen (15) days of completing the investigation, the DBELO shall submit a written report to the County Executive, with copies to the complainant, the party alleged to have caused the intimidation or retaliation, and the USDOT. All documentation relating to the complaint shall be maintained by OMA and the DBELO for a period of six (6) years.

Sec. 7.04 Monitoring Contractors' Performance and Violations

The DBELO or his designee shall review all federally funded contracts for compliance with the DBE Program. This review shall include, but not be limited to, whether the proposed DBE participation (both in dollar amounts and percentages) and committed goal level upon which the federally-funded contract was awarded are maintained over the duration of the contract.

All contractors shall promptly render payment to all subcontractors in accordance with the provisions described herein for each federally funded contract. Each contractor shall provide proof of payment to subcontractors in a form and with content approved by the County project manager, evidencing that the subcontractor has been duly paid for the completion of satisfactory services, unless a bona fide dispute, documented in writing exists between the contractor and the unpaid subcontractor. In the event of a bona fide dispute, the contractor shall provide written documentation of such dispute to the County project manager responsible for the contract. The County may withhold all payments under a federally-funded contract until all documentation required by this section has been provided in a form satisfactory to the County.

Sec. 7.05 Enforcement actions under the DBE program.

If a firm that does not meet the eligibility criteria of certification as provided for in the DBE Regulation attempts to participate in a federally-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the County may initiate suspension or debarment proceedings against the DBE firm in accordance with federal and state law.

If a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances

indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of certification as provided for in the DBE Regulation, the County may initiate suspension or debarment proceedings against the DBE firm in accordance with federal and state law.

The County may refer to Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, or to the State Attorney General for prosecution under New York State Law, any person who makes a false or fraudulent statement to a State agency in connection with participation of a DBE in any federally-assisted program or otherwise violates applicable Federal or State statutes.

Enforcement Mechanisms

Under part 26.107, the County may include provisions in their Federally-Funded Contracts requiring prime contractors to be subject to enforcement penalties if they commit violations against the Nassau County DBE Program. The following language shall be included in every federally-funded contract:

During the performance of this Contract, the Contractor or Consultant, for itself, its assignees and successor in interest ("Contractor") agrees as follows:

- (a) Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Program as it now exists or as it may be amended in the future (the "DBE Program"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Program are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Program is a material breach of Contractor's obligations under this Agreement and shall entitle the County, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Program or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive.**
- (b) If Contractor willfully fails to comply with any of the provisions of the DBE Program, the rules and regulations implementing the DBE Program, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be found to have breached its contract and liable to Nassau County for any legal, contractual or equitable remedy allowable under federal, state or local law, including, but not limited to, compensation for fines paid by Nassau County resulting from Contractor's acts or omissions. The Disadvantaged Business Enterprise Liaison Officer or any other public official authorized to enforce the DBE Program (separately and collectively, the "DBELO") may also impose other sanctions against Contractor authorized in the DBE Program, including declaring the Contractor to be irresponsible and ineligible to contract with the County for a period of up to three (3) years or revocation of the Contractor's DBE certification. The DBELO will determine the sanctions to be imposed. By entering into this**

Agreement, Contractor acknowledges and agrees that any damages assessed by the DBELO shall be payable to County upon demand. Contractor further acknowledges and agrees that any damages assessed may be withheld from any monies due to Contractor on any contract with the County.

- (c) **Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Program for a period of six (6) years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the DBELO or the County Comptroller upon request.**

Sec. 7.06 Fraud Detection and Prevention

The County has established a fraud prevention and detection policy to facilitate the development of controls which will aid in the prevention and detection of unlawful or wasteful acts (commonly called fraud and abuse) against the County and its enterprises. To facilitate the detection of fraud, several mechanisms have been established to assist anyone who wants to contact the County when they believe fraud has been committed in its DBE Program. If the County detects any fraud, it will forward such findings to DOT.

VIII. Business Support Programs

Sec. 8.01 Business Development Program

The DBELO, in cooperation with County agencies, Community Based Organizations and other government entities, is authorized to develop programs and activities to provide outreach to developing DBEs and to assist the business development of such enterprises. These activities may include, but are not limited to:

1. Communicating information about the DBE Program through a newsletter, the internet, workshops, training activities, and other outreach activities conducted by the County or other public or private entities in collaboration with the County.
2. Development of a resource directory to be provided to the DBE community in the Nassau County area with information as to assistance, bonding, financial management and/or accounting, continuing education, professional organization and other resources that improve small business market access or capacity.
3. Such other programs or activities as the DBELO may from time to time implement.

IX. DBE Program Updates

Pursuant to 49 CFR §26.21, the County will continue to carry out this program until significant changes to this DBE Program are adopted. If material changes of the DBE Program do occur, the County will provide to the USDOT a proposed overall goal and goal setting methodology and other program updates not later than June 1 of every year.

Attachments

Attachment A - Organizational Chart

Attachment B – Minority Owned Banks

Attachment C – Four Certifying Agencies

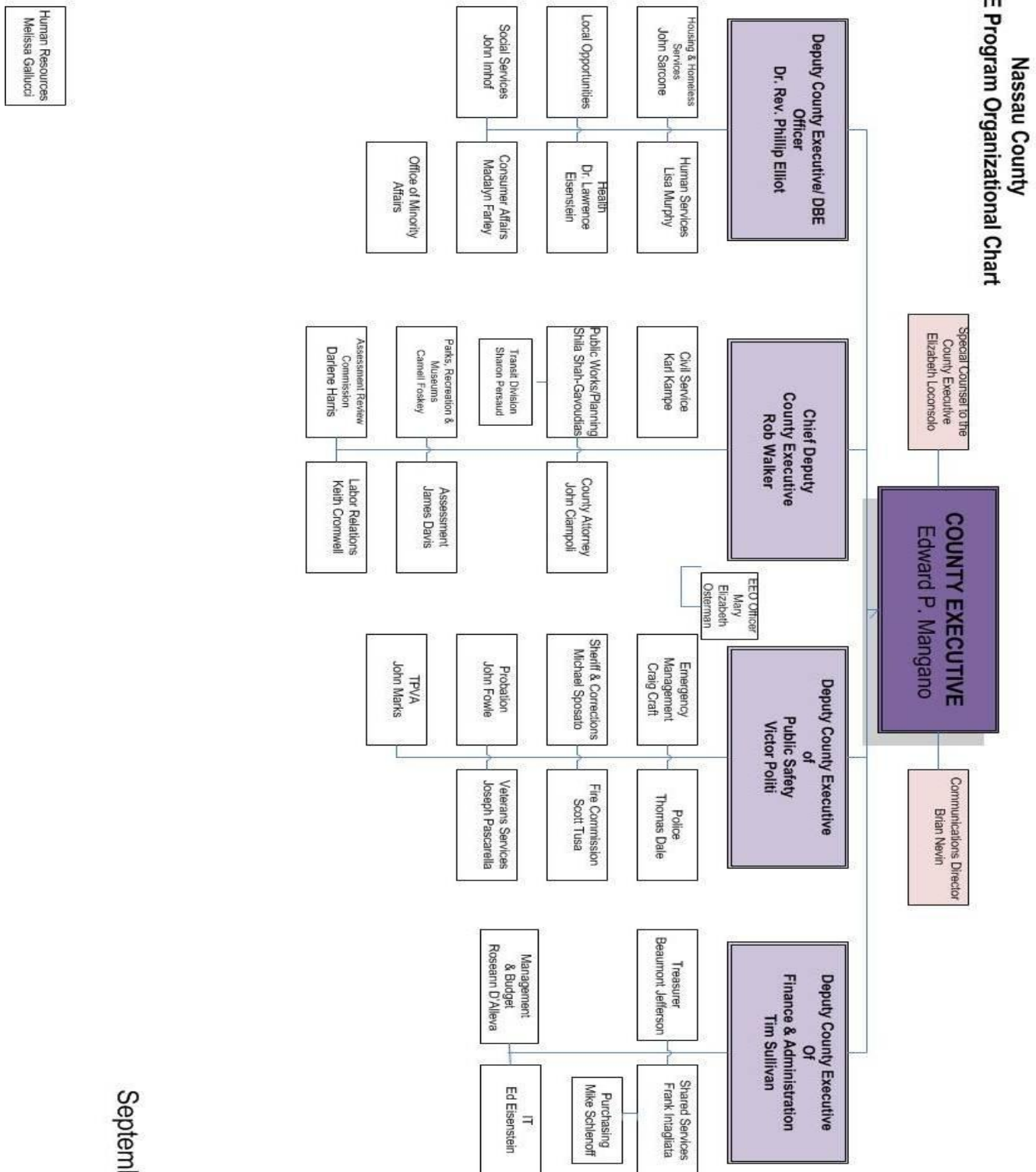
Attachment D – Uniform Certification Application

Attachment E – Guidance Concerning Good Faith Efforts

Attachment F – Overall Goal and Goal Setting Methodology for FFY 2012-2014

Attachment G – Individual Determinations of Social and Economic Disadvantage

Attachment A – Organizational Chart



September 2013

Attachment B – Minority Owned Banks

BANK	NASSAU COUNTY LOCATION	HEADQUARTERS
City National Bank of New Jersey	Roosevelt Hempstead	900 Broad Street Newark, New Jersey 07102
First American International Bank	None	5503 8 th Avenue Brooklyn, New York 11220
Eastbank, NA	None	235 Canal Street, New York, NY 10013
United Orient Bank	None	10 Chatham Square New York , New York 10013
Asia Bank	None	13534 Roosevelt Ave Flushing, NY 11354-5393
Amerasia Bank	None	41-06 Main Street Flushing, New York 11355
Indus American Bank	Hicksville	1536, Oak Tree Road, Iselin, NJ 08830
New Bank	None	146-01 Northern Blvd. Flushing, NY 11354
State Bank of India	Bone	460 Park Avenue, New York, NY 10022
BPD Bank	None	90 Broad St # 5 New York, NY 10004
Shinhan Bank America	None	211-11 Northern Blvd. 1 st Floor Bayside, NY 11361
Hanover Community Bank	Garden City Park	2131 Jericho Turnpike Garden City Park, New York
Carver Federal Savings Bank	None	75 West 125th Street New York, NY 10027 Telephone: (718) 230-2900
Banco Popular North America	None	P.O. Box 690547 Orlando, FL 32869-0547 1-800-377-0800

Attachment C – Four Certifying Agencies

You must be certified as a DBE by one of the following agencies:

The New York Department of Transportation
The Metropolitan Transportation Authority
The Niagara Frontier Transportation Authority
Port Authority of New York New Jersey

These agencies have a reciprocal agreement. Once certified as a Disadvantaged Business Enterprise (DBE) by one of these agencies, your firm is automatically certified with all four and will be entered into the DBE online directory (<http://biznet.nysucp.net>).

METROPOLITAN TRANSPORTATION AUTHORITY (MTA)

Office of Civil Rights
2 Broadway, 16th Floor
New York, New York 10004-9256
Caroline Greene
(646) 252-1378
(646) 252-1350 fax
cgreene@mtahq.org

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)

Equal Employment Opportunity/Diversity Development Department
181 Ellicott Street
Buffalo, New York 14203
Linda Seay
(716) 855-7489
(716) 855-7657
Linda_seay@nfta.com

NEW YORK STATE DEPARTMENT OF TRANSPORTATION (NYSDOT)

Contract Audit Bureau
DBE Certification
50 Wolf Road, 1st Floor
Albany, New York 12232
(518) 457-3180
(518) 457-1675 fax
mdrake@dot.state.ny.us

PORT AUTHORITY OF NEW YORK AND NEW JERSEY (PANYNJ)

Small Business Programs
New York, New York 10003
(212) 435-7817
(212) 435-7828
rhsu@panynj.gov

Office of Minority Affairs

Attachment D – Uniform Certification Application

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION ROADMAP FOR APPLICANTS

¶ Should I apply?

- o Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- o Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- o Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$20.41 million in gross annual receipts?
- o Is your firm organized as a for-profit business?

If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

¶ Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

¶ Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

¶ Where can I find more information?

- o U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- o SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of SIC codes)
- o 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

A. Prior/Other Certifications Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es)) ☐ DBE Name of certifying agency:

Has your firm's state UCP conducted an on-site visit?

☐ Yes, on ___/___/___ State: _____ ☐ No

☐ 8(a) ☒ STOP! If you checked either the 8(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

☐ SDB

B. Prior/Other Applications and Privileges Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

☐ Yes, on ___/___/___ ☐ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

A. Contact Information (1) Contact person and Title: (2) Legal name of firm:

(3) Phone #: (4) Other Phone #: (5) Fax #:

(6) E-mail: (7) Website (if have one):

(8) Street address of firm (No P.O. Box): City: County/Parish: State: Zip:

(9) Mailing address of firm (if different): City: County/Parish: State: Zip:

Section 1: CERTIFICATION INFORMATION

Section 2: GENERAL INFORMATION

B. Business Profile (1) Describe the primary activities of your firm: (2) Federal Tax ID (if any):

(3) This firm was established on ___/___/___ (4) I/We have owned this firm since:

___/___/___

(5) Method of acquisition (check all that apply):

☐ Started new business ☐ Bought existing business ☐ Inherited business ☐ Secured concession

☐ Merger or consolidation ☐ Other (explain) _____

(6) Is your firm "for profit"? ☐ Yes ☐ No ☒ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply):

☐ Sole Proprietorship

☐ Partnership

☐ Corporation
☐ Limited Liability Partnership
☐ Limited Liability Corporation
☐ Joint Venture
☐ Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?

☐ Yes ☐ No

If Yes, explain:

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____

Year _____ Total receipts \$ _____

Year _____ Total receipts \$ _____

C. Relationships with Other Businesses (1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?

☐ Yes ☐ No

If Yes, identify: Other Firm's name: _____

Explain nature of shared facilities:

(2) At present, or at any time in the past, has your firm: (a) been a subsidiary of any other firm? ☐ Yes ☐ No

(b) consisted of a partnership in which one or more of the partners are other firms? ☐ Yes ☐ No

(c) owned any percentage of any other firm? ☐ Yes ☐ No

(d) had any subsidiaries? ☐ Yes ☐ No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ☐ Yes ☐ No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

Name Address Type of Business

- 1.
- 2.
- 3.

D. Immediate Family Member Businesses Do any of your immediate family members own or manage another company? ☐ Yes ☐ No

If Yes, then list (attach extra sheets, if needed):

Name Relationship Company Type of Business Own or Manage?

- 1.
- 2.

Section 3: OWNERSHIP

A. Background Information (1) Name: (2) Title: (3) Home Phone #:

(4) Home Address (street and number): City: State: Zip:

(5) Gender: ☐ Male ☐ Female (6) Ethnic group membership (Check all that apply):

☐ Black ☐ Hispanic ☐ Native American

☐ Asian Pacific ☐ Subcontinent Asian

☐ Other (specify) _____

(7) U.S. Citizen: ☐ Yes ☐ No

(8) Lawfully Admitted Permanent Resident: ☐ Yes ☐ No

B. Ownership Interest (1) Number of years as owner: _____ (2) Initial investment to Type Dollar Value

acquire ownership Cash \$

interest in firm: Real Estate \$

Equipment \$

Other \$

(3) Percentage owned:

(4) Familial relationship to other owners:

(5) Shares of Stock: Number Percentage Class Date acquired Method Acquired

(6) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title:

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title:

Nature of Business Relationship:

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged) (1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)

(2) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

If Yes, explain (attach additional sheets if needed):

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

Name	Title	Date Appointed	Ethnicity	Gender
------	-------	----------------	-----------	--------

(1) Officers of the Company (a)

(b)

(c)

(d)

(e)

(2) Board of Directors (a)

(b)

(c)

(d)

(e)

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? π Yes π No

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? π Yes π No

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship:

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet): Name Title Ethnicity Gender

(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)

a.

b.

(2) Estimating and bidding a.

b.

(3) Negotiating and Contract Execution a.

b.

(4) Hiring/firing of management personnel a.

b.

(5) Field/Production Operations Supervisor a.

b.

(6) Office management a.

b.

(7) Marketing/Sales a.

b.

(8) Purchasing of major equipment a.

b.

(9) Authorized to Sign Company Checks (for any purpose) a.

b.

(10) Authorized to make Financial Transactions a.

b.

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? π Yes π No

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?

π Yes π No

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship:

(2) Vehicles Type of Vehicle Make/Model Current Value Owned or Leased?

(a)

(b)

(c)

(3) Office Space Street Address Owned or Leased? Current Value of Property or Lease

(a)

(b)

(4) Storage Space Street Address Owned or Leased? Current Value of Property or Lease

(a)

(b)

(1) Equipment Type of Equipment Make/Model Current Value Owned or Leased?

(a)

(b)

(c)

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

E. Financial Information (1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____

(c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: _____

(b) Name of agent/broker _____ (c) Phone No: () _____

(d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____

(e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner: Name of Source Address of Source

Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
----------------------------------	-----------------	-----------------	-----------------

1.

2.

3.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed): Contribution/Asset Dollar Value From Whom

Transferred	To Whom Transferred	Relationship	Date of Transfer
-------------	---------------------	--------------	------------------

1.

2.

3.

H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed): Name of License/Permit Holder Type of License/Permit Expiration Date License Number and State

1.

2.

3.

I. List the three largest contracts completed by your firm in the past three years, if any: Name of Owner/Contractor Name/Location of Project Type of Work Performed Dollar Value of Contract

1.

2.

3.

D. Does your firm rely on any other firm for management functions or employee payroll? π Yes π No If Yes, explain:

J. List the three largest active jobs on which your firm is currently working: Name of Prime Contractor and Project Number Location of Project Type of Work Project Start Date Anticipated Completion Date Dollar Value of Contract

1.

2.

3.

Attachment E – Guidance Concerning Good Faith Efforts

TITLE 49 - TRANSPORTATION

SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

PART 26 - PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

subpart f - COMPLIANCE AND ENFORCEMENT

Appendix A to Part 26 - Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g.

attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who

have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the

performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Attachment F - Overall Goal and Goal Setting Methodology for FFY 2012-2014

EDWARD P. MANGANO
COUNTY EXECUTIVE



PHILLIP E. ELLIOTT
DEPUTY COUNTY EXECUTIVE/ DBELO

Nassau County
Office of Minority Affairs
40 MAIN STREET, 3RD FLOOR
HEMPSTEAD, NY 11550
TEL. (516)-572-1933
FAX: (516)-572-1355

Nassau County
Disadvantaged Business Enterprise (DBE)
Overall Goal and Goal Setting Methodology for FFY 2012-2014
Federal Transit Administration
July 11, 2011

Nassau County is a recipient of Federal funds through the United States Department of Transportation (USDOT), Federal Transit Administration (FTA). Recipient agencies which expect to award contracts exceeding \$250,000 in FTA funds in a Federal fiscal year are required to set a Disadvantaged Business Enterprises (DBE) goal. Nassau County intends to enter into multiple federally funded contracts during FFY 2012-2014.

The purpose of the overall goal is to achieve a "level playing field" for ready, willing and able DBE's seeking to participate in FTA-funded contracts awarded by Nassau County. In an effort to reach this level playing field, Nassau County examined its programs and relevant market to determine the amount of participation DBE's would be expected to achieve in the absence of discrimination. This approach is consistent with 49 CFR §26.45, which requires recipients of USDOT federal-aid to utilize a two-step process in the development of their overall DBE goals.

Nassau County has chosen a geographic region that is consistent with the New York Metropolitan Transportation Council (NYMTC) area as its relevant local market. The NYMTC region consists of 10 counties: Nassau, Suffolk, Putnam, Rockland, Westchester and the New York City counties: Bronx, Kings, New York, Queens and Richmond.

Nassau County anticipates entering into multiple contracts for work to be completed in the following NAICS industries codes of: Commercial and Institutional Building Construction (236220), Roofing Contractors (238160), Electrical Contractors and Other Wiring Installation Contractors (238210), Plumbing, Heating, and Air-Conditioning Contractors (238220), Other Building Equipment Contractors (238290), Computer and Computer Peripheral Equipment & Software Merchant (423430), Architectural Services (541310), Engineering Services (541330), Custom Computer Programming Services (541511), Computer Systems Design Services (541512), Other Computer Related Services (541519), and Security Systems Services (561621).

STEP ONE: Determine the base Figure for the Relative Availability of DBE's

Step one is to determine the base figure for the relative availability of DBE's. For this step Nassau County weighted the relative availability of DBE's (*for the selected industries*), giving more weight to those industries where the County expects to spend more money.

To determine the numerator, Nassau County used the number of available DBE's (*for the geographic region*) listed under the North American Industry Classification System (NAICS) in the New York State Unified Certification Program (UCP) (*for the selected industries listed above*). Source: NYS BIZNET by County – DBEs.

To determine the denominator, Nassau County used the number of available firms (*for the geographic region*) listed under the North American Industry Classification System (NAICS) in the 2009 Census Bureau's County Business Patterns (CBP) (*for the selected industries listed above*).

To determine the weights, Nassau County examined its estimated contracting opportunities for FFY 2012-2014 and gave the following weights to the NAICS codes: Commercial and Institutional Building Construction 0.94%, Roofing Contractors 11.27%, Electrical Contractors and Other Wiring Installation Contractors 1.57%, Plumbing, Heating, and Air-Conditioning Contractors 1.57%, Other Building Equipment Contractors 0.94%, Computer and Computer Peripheral Equipment & Software Merchant 1.72%, Architectural Services 1.25%, Engineering Services 47.59%, Custom Computer Programming Services 10.02%, Computer Systems Design Services 11.27%, Other Computer Related Services 10.02%, and Security Systems Services 1.85%.

Base Figure = Weight * (DBE's / County Business Patterns)

$$\begin{aligned}
 \text{Base Figure} = & [.0094 \frac{36}{1486} + .1127 \frac{5}{380} + .0157 \frac{40}{3407} + .0157 \frac{20}{4257} + \\
 & .0094 \frac{2}{279} + .0172 \frac{5}{990} + .0125 \frac{29}{4000} + .4759 \frac{63}{1237} + \\
 & .1002 \frac{10}{2646} + .1127 \frac{21}{2264} + .1002 \frac{4}{515} + .0185 \frac{5}{382}] \times 100
 \end{aligned}$$

Base Figure = 2.89%

Based upon the above information, the DBE base figure for this project is set at 2.89%

STEP TWO: Adjustment of the Base Figure for the Overall Goal

The second step in this process is to adjust the base figure to reflect the DBE participation expected absent the effects of discrimination. Nassau County has chosen to incorporate DBE past participation in order to adjust the base figure.

Nassau County has issued no contracts in the past three FFY that offered similar contracting opportunities as the contracts that will be issued in FFY 2012-2014. Therefore, there is no adjustment to the base figure.

Adjustment to Base Figure: (0 + 2.89) = 2.89

Based upon the above information, the DBE overall goal is set at 2.89%.

Means to Meet Overall DBE Goal

The County has not issued these types of contracts in the past and therefore will use a race-conscious means to promote and encourage DBE participation on FTA assisted contracts.

Public Involvement in the Overall Goal Setting Process

Nassau County published a countywide public notice of the proposed goal and methodology in Newsday on July 13, 2011. The goals and methodology were made available for inspection during normal business hours at the Nassau County Office of Minority Affairs, 40 Main Street, 3rd Floor, Hempstead, NY 11550 for 30 days following the date of publication of the notice and were also posted on the County's DBE website for a period of 45 days starting July 13th, 2011. Written comments on the goal will be accepted for 45 days from the date of public notice.

Submitted by:
Phillip E. Elliott
Nassau County DBE Liaison Officer

Attachment G – Individual Determinations of Social and Economic Disadvantage

Appendix E to Part 26--Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) Education. Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) Employment. Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) Business history. The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I. (A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities--especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)--may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

(A) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) Submission of narrative and financial information.

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(C) Factors to be considered. In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business,

which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) Transfers within two years.

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).